

Notice No.: 96-004
Date: April 17, 1996
Applies to: TRS employers
Subject: Post-retirement employment of TRS Plan 1 retirees

The purpose of this notice is to provide information about:

- recent changes in the laws governing post-retirement employment of TRS Plan 1 retirees;
- considerations when employing TRS Plan 1 retirees as independent contractors.

Post-Retirement Employment of TRS 1 Retirees

After retirement from the Teachers' Retirement System (TRS), a TRS Plan 1 retiree can work for a school district, educational service district, higher education institution, or the State Schools for the Deaf or Blind for up to 525 hours (75 days) each fiscal year without affecting his or her pension. The employment can be in any capacity, for instance, as a substitute teacher, a bus driver, or a janitor.

In 1994 and in 1995, the Washington State legislature amended RCW 41.32.570 to allow some TRS Plan 1 retirees to work for up to an additional 105 hours (15 days) during a fiscal year, depending upon the nature of the employment. For a retiree to work these additional hours without affecting his or her pension, certain conditions must be met. The following pages provide details about these requirements for employing TRS Plan 1 retirees.

u Additional Hours Must Be for a School District

The option to work up to an additional 105 hours during a fiscal year is only available to school district employees. An employee of a school district administered through a multi-district substitute cooperative is also covered. An employee of an educational service district, the State Schools for the Deaf or Blind, or an institution of higher education is not covered.

u Additional Hours Must Be as a Substitute Teacher or
Substitute Administrator

The option to work up to 105 additional hours in a fiscal year is only available for employment as a substitute teacher or a substitute administrator. A substitute teacher is a temporary teacher hired on an on-call basis. Someone employed under a contract which guarantees a minimum number of hours does not qualify as a substitute teacher, even if the person's job is to fill in for absent teachers. Similarly, someone hired to teach a class for the remainder of a semester or school year is not working on an on-call basis and is not a substitute teacher.

A substitute administrator is a person who fills in for an absent administrator on a temporary basis. A substitute administrator *can be* employed under a contract with a guaranteed number of hours.

u A School District Must Adopt a Resolution

Before a school district can employ a TRS Plan 1 retiree for an additional 105 hours in a fiscal year, the district must adopt a resolution establishing the need for the additional employment. Each resolution is valid only for the fiscal year in which it is adopted. The resolution authorizes additional employment only on or after the date it has been adopted and cannot be applied retroactively.

Authorizing additional hours for substitute teachers

To authorize a TRS Plan 1 retiree to work an additional 105 hours in a fiscal year as a substitute teacher, a resolution must be adopted stating that the school district has exhausted or can reasonably anticipate exhausting its list of qualified and available substitutes, and therefore, the services of retired teachers or administrators are necessary to address the shortage of qualified and available substitutes. If a school district is a member of a multi-district cooperative, the board of each school district in the cooperative must adopt a resolution.

After a resolution has been adopted, a school district may employ a TRS Plan 1 retiree as a substitute teacher for up to an additional 105 hours once its list of qualified and available substitutes has been exhausted.

Authorizing additional hours for substitute administrators

To authorize a TRS Plan 1 retiree to work an additional 105 hours in a fiscal year as a substitute administrator, a resolution must be adopted stating that an emergency exists and the services of a retired administrator or retired teacher are required as the school district cannot find a replacement administrator to fill a vacancy.

The resolution must indicate the name of the individual authorized to work the additional hours. Once the resolution has been adopted, the district may employ the retired TRS Plan

1 teacher or administrator as a substitute administrator for up to an additional 105 hours in a fiscal year.

u A School District Must Send Information to TRS

If a resolution is adopted to provide for additional employment for TRS Plan 1 retirees as substitute teachers or substitute administrators, a school district must send information to TRS during the year to help track these employees.

As appropriate, please forward the following information to the Teachers' Retirement System, PO Box 48380, Olympia WA 98504-8380.

Within 30 days after a resolution is adopted:

- send a copy of the resolution;
- if the resolution is for substitute teaching, send a list of all TRS Plan 1 retirees working for the school district as substitute teachers.

During the fiscal year:

- send a copy of any amendments to the resolution or to the list of TRS Plan 1 retirees working as substitutes;
- send written notice immediately if any TRS Plan 1 retiree works beyond 630 hours (90 days).

At the end of the fiscal year:

- send a letter indicating the total number of hours worked by each TRS Plan 1 retiree.

u A Day is Defined as Seven Hours

For the purposes of tracking post-retirement employment, the Washington Administrative Code (WAC 415-112-015) defines a day as seven hours of compensated employment.

15 days = 105 cumulative hours

75 days = 525 cumulative hours

90 days = 630 cumulative hours

When tracking a retiree's hours, only hours of compensated employment are counted. For example, if a retiree is hired as a substitute teacher with an eight-hour work day which consists of seven hours of paid duty and one hour of unpaid, duty-free lunch time, only the seven hours of compensated employment would be counted toward the hourly limits for the fiscal year.

Employing TRS 1 Retirees as Independent Contractors

Both the school district and the retiree should exercise caution when entering into independent contract agreements. A TRS Plan 1 retiree working for a public educational institution as a bona fide independent contractor is not considered an employee of the institution and therefore is not subject to the employment limitations outlined on the preceding pages.

However, simply employing a retiree under contract and paying the retiree through accounts payable does not necessarily make the individual an independent contractor. The Department of Retirement Systems, as does the Internal Revenue Service, looks at the nature of the employment to determine whether someone is an employee or a contractor. Retirees can find themselves at financial risk if they enter into employment agreements that do not meet the criteria for independent contracting.

The Washington Administrative Code (WAC 415-02-110) provides detailed information about the guidelines for employing independent contractors. Refer to the WAC or contact DRS if you have questions about hiring a retiree as an independent contractor.

Questions?

If you have questions about the information in this Notice or would like additional details, please refer to the resources or contact the individuals shown below.

Prior rules relating to post-retirement employment:

- see DRS Notice 92-004.

Rules governing retirees who return to work:

- see the DRS brochure *Thinking About Working After Retirement?*

Guidelines for employing independent contractors:

- see WAC 415-02-110; or call Paul Neal, Legal Affairs, at 360-709-4747.

Other questions:

- call Margaret Wimmer, TRS Administrator, at 360-709-4710.

Sheryl Wilson
Director

1996 DRS Notices

For a copy of a Notice, call Systems Communications at (360) 586-4515.

Notice No.	Applies to/ Subject matter
-----------------------	---------------------------------------

- | | |
|--------|---|
| 96-001 | PERS, LEOFF, WSPRS, and JRS employers
Members' annual statements and sequencing information |
| 96-002 | School District Employers
Service credit statements for PERS members |
| 96-003 | All Employers
Changes in DRS telephone numbers |
| 96-004 | TRS Employers
Post-retirement employment of TRS Plan 1 retirees |